IN THE

Supreme Court of the United States

February Term, 1981

No. 80-193
No. 79-1943

HENRY BUCZYNSKI, et al.,
Appellants,

against

THE GENERAL MOTORS CORPORATION,
Appellee.

JOSEPH ALESSI, et al.,
Appellants,

against

RAYBESTOS-MANHATTAN, INC., et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS AND THE NATIONAL RETIRED TEACHERS ASSOCIATION

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IN THE

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No. 80-193
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HENRY BUCZYNSKI, ALEX BORUSOVIC, and other Retirees similarly situated,

Appellants,

against

THE GENERAL MOTORS CORPORATION,

Appellee.

STATE OF NEW JERSEY,

Intervenor.

JOSEPH ALESSI, RAYMOND BUISSON, STEPHEN MICHALSKI, CHARLES REPKA, HELEN VOGT and T. EDWARD WHITE,

Appellants,

against

RAYBESTOS-MANHATTAN, INC., and RAYBESTOS-MANHATTAN, INC. EMPLOYEE RETIREMENT PLAN, jointly, severally or in the alternative,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND STATEMENT OF INTEREST OF AMICI CURIAE

The American Association of Retired Persons ("AARP") and the National Retired Teachers Association ("NRTA"), of 1909 K Street, N.W., Washington, D.C. 20049, respectfully move the Court, pursuant to Rule 36 of the Rules of the United

States Supreme Court, for permission to file the attached brief amici curiae for the reasons set forth below, which also disclose the interest of the amici.

AARP and NRTA are affiliated and jointly administered not-for-profit membership corporations of more than 12,500,000 persons over the age of 55. This figure represents approximately one out of four people over the age of 55 nationwide, the largest organized group of older Americans in the country.

Among the purposes of AARP and NRTA are: to enhance the quality of life for older Americans; to promote independence, dignity and purpose for older persons; to help to understand aging and its ramifications; to seek to foster equality of opportunity for the aging; and to offer older citizens opportunities to plan a way of life designed to obtain maximum enrichment, and to promote means by which our older citizens can maintain and improve the economic status to which they are accustomed and entitled.

Although exact figures are not available concerning the number of AARP-NRTA members who participate in private pension plans and/or receive workmen's compensation benefits, it safely can be stated that the numbers are enormous. Since the decision of the Court will determine the propriety of an employer offsetting workmen's compensation payments against pension benefits, the outcome of this appeal is especially critical to the welfare of AARP and NRTA members and all older Americans.

AARP and NRTA believe that this attempted offsetting is an unconscionable effort by employers to meet with a single payment two separate and distinct obligations owed to employees. The effect of this practice can be particularly devastating to older citizens, for whom pension payments, frequently supplemented by workmen's compensation payments, often is the primary source of income. Amici are interested in assuring for older Americans the full economic benefits to which their lifetime of labor equitably entitle them. As a representative of

over 12½ million older citizens, AARP-NRTA bring a unique perspective to the issues involved in this proceeding.

Amici have been unable to obtain the consent of the appellees to the filing of the attached brief, thus necessitating this motion.

WHEREFORE, AARP and NRTA respectfully move for permission to file the attached brief amici curiae.

Respectfully submitted,

MILLER, SINGER, MICHAELSON & RAIVES

By: /s/ LAWRENCE I. BRANDES

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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
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BRIEF AMICI CURIAE

Introduction

Pension benefits in no sense are a product simply of employer largesse. Often, employees make direct contributions to the trust from which their pension benefits ultimately are paid. To the extent that employers contribute to the same trust,

they receive a very real and substantial, and bargained for, consideration for so doing in the form of employee willingness to accept lower immediate compensation.

Similarly, employers receive very real consideration for the obligations imposed upon them by state workmen's compensation laws; the protection against suits by employees seeking greater amounts than are provided by statute.

By offsetting workmen's compensation benefits against pension benefits, employers are reaping an unjustifiable windfall, receiving two separate and distinct considerations for the same dollar payment. Workers, on the other hand, are compelled either to forego their hard won workmen's compensation benefits or accept a diminution of their equally hard won pension benefits.

This fundamental inequity, so obviously contrary to both the spirit and the letter of the Employee Retirement Income Security Act of 1974 ("ERISA"), was ignored totally in the decision of the Third Circuit. Amici submit that if the essential unfairness of this offset is considered in light of the purpose and concept of ERISA as a whole, such offset must be invalidated, and the decision of the Third Circuit reversed.

ARGUMENT

I.

THE LANGUAGE, HISTORY AND PURPOSES OF ERISA MANDATE THAT AN EMPLOYEE'S RIGHTS TO VESTED RETIREMENT BENEFITS CANNOT BE TAKEN AWAY OR COMPROMISED FOR ANY REASON, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT

In 1974, Congress declared it to be the public policy of the United States to improve "the *equitable* character of [employee pension] plans by requiring them to vest the accrued benefits of

employees with significant periods of service . . ." ERISA Sec. 2(c), 29 USC Sec. 1001(c) (emphasis supplied).

Congress was mindful that employees "with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in [their] plans," ERISA Sec. 2(a), 29 USC Sec. 1001(a), despite the fact, which Congress also recognized, that such retirement benefits, although nominally paid by employers, really amount to deferred compensation earned by their employees which is expected to be received in lieu of current wages.

To assure that such benefits will in fact be received and will no longer be lost, Congress mandated in ERISA certain minimal standards to assure that such benefits unconditionally will be guaranteed ("vested") to each employee after he has served a minimum number of years, typically ten.

To reinforce that mandate, Congress further established a general rule of "non-forfeitability"—that is, after the stated minimum statutory period, employees' accrued benefits will not be subject to defeasance for *any* reason.*

> "With the limited exceptions noted above, *no rights, once they are required to be vested may be lost by the employee under any circumstances . . .*" Senate Finance Committee, Report No. 93-383, *US Code, Congressional and Administrative News*, 1974, at 4934-4935; House Ways and Means Committee, Report No. 93-807, *Id.*, at 4726. (emphasis supplied)

The workmen's compensation offset provision sanctioned by the Third Circuit cannot be reconciled with these clear expressions of Congressional intent and purpose. In ERISA, Congress sought to insure that employers not deprive their workers of the retirement benefits to which they were entitled. Yet, by means of a workmen's compensation offset, employers

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ERISA Sec. 203(a), 29 USC Sec. 1053(a). Subsection 3 of that section provides four exceptions to this rule, none of which concern offsets for workmen's compensation benefits.

can do just that simply by making the workmen's compensation payments which they are required to make anyway by state statutes.

When viewed in traditional contract terms, the gross inequity of the offset is apparent. On the one hand, employer and employee have entered into a first contract whereby the employee agrees to forego additional immediate compensation in return for the employer's agreement to make specified pension payments in the future. On the other hand, employer and employee have entered into a separate and distinct second contract whereby the employee agrees not to sue the employer for work related injuries in return for the employer's agreement to make specified payments on account of any such injuries. The employee lives up to his end of both contracts: he accepts lower immediate compensation, and he does not sue the employer for his work related injuries. The employer, however, makes *only* the payment required by the *second* contract, then contends that he has performed his obligations under *both* contracts. Surely, such a result would not be countenanced by this Court.

Yet this is precisely what appellees seek to do by means of the workmen's compensation offset. They seek this Court's sanction to use the same dollar to pay separate and distinct obligations for which they received separate and distinct considerations.

In addition to this basic unfairness, the workmen's compensation offset totally frustrates the strong public policy embodied in state workmen's compensation laws. There can be no question but that the purpose behind such laws is to place the burden of work related injuries upon the employers who profit from the injured worker's labor, and to provide those employers with a liability which is limited and definite. But, if workmen's compensation payments may be offset against the injured worker's pension benefits, the burden for the work related injury is shifted from employer to employee. The

employer still receives his benefit under the statute—a limited and definite liability—but he is relieved of his obligation.

Further, this Court must consider the inherent inequality involved where two workers, one in good health, the other having had the misfortune to suffer a job related, perhaps incapacitating injury, receive identical benefits upon retirement. Workmen's compensation, as the name implies, is designed to compensate workers for such injuries; yet, if the offset is upheld, the injured worker is denied even one additional penny to compensate him for the extra financial, physical and emotional hardships he endures from his disability.

CONCLUSION

Amici will not burden the Court with a repetition of the many compelling legal arguments advanced in support of appellants' claim that the workmen's compensation offset is a direct violation of ERISA Sec. 203(a), 29 USC Sec. 1053(a). However, amici represent some 12½ million older Americans, many of whose sole source of income comes from pensions and Social Security, and the more unfortunate of whom also collect workmen's compensation payments. In addition, as of 1975 some 50,000,000 Americans were participants in private pension plans (America Council of Life Insurance, ***Pension Facts 1977,*** at 20) and, as of 1972, some 2,000,000 Americans were receiving workmen's compensation payments (Daniel N. Price, ***A Look at Workers' Compensation Beneficiaries,*** appearing in Social Security Bulletin of October, 1976 at 38-47). This Court's decision will affect all of them, as it surely will affect millions of citizens in the future.

In reaching that decision, amici urge the Court to keep always in mind the fundamental contradiction between the expressed purpose of ERISA—to guarantee that pension plans be ***equitable*** (29 USC Sec. 1001(c))—and the greatly ***inequitable*** nature of the workmen's compensation offset. Amici believe that that offset clearly is prohibited by ERISA. If this Court entertains any doubts, amici pray they will be resolved in

favor of that which is fair, just and equitable—and that the offset be disallowed. The decision of the Third Circuit should be reversed.

Respectfully submitted,

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